

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

AGRIGENETICS, INC. d/b/a MYCOGEN )  
SEEDS, )

Plaintiff and Counter defendant, )

vs. )

PIONEER HI-BRED INTERNATIONAL, )  
INC., )

Defendant and Counterclaimant. )

Case No. 1:08-cv-00802-TWP-TAB

**ENTRY ON MOTION FOR RECONSIDERATION  
AND CLARIFICATION OF ISSUES REMAINING FOR TRIAL**

The Court has taken under advisement the fully briefed matters brought forth through Pioneer Hi-Bred International, Inc.'s Motion for Reconsideration [Dkt. 191]. The Amended Order will reflect the clarification and resolution of the following matters:

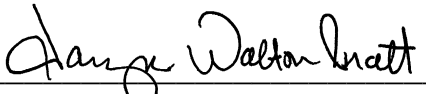
- (1) Both parties stated that the 1995 Collaboration Agreement was subject to either California or Iowa contract law. Further, both parties acquiesced that based upon the law in both California and Iowa, extrinsic evidence is properly considered in order to determine whether the contract is reasonably susceptible to the interpretation proffered. Therefore, in its ruling, the Court considered the extrinsic evidence on record presented by both parties in order to determine whether the language was reasonably susceptible to the interpretations offered.
- (2) Pioneer's submission of evidence from Mr. Beck is not new evidence under Rule 59(e) and its submission is not proper under the law; therefore the citations for evidence submitted from Mr. Beck cannot be considered by the Court in the Motion for Reconsideration.
- (3) Pioneer improperly characterized the Court's use of the term trade dress. The issue of trade dress was never an area of inquiry before the Court and is not relevant to the issue of whether Pioneer breached section 4.2 of the 1995

Collaboration Agreement. The Court therefore has removed the brief reference to trade dress contained in the original Entry (Dkt. 173).

- (4) Upon reconsideration, the Court finds that the ordinary course of business requirement refers to the requirement that Pioneer *use* proprietary packaging of Pioneer as used in the ordinary course of its business and *display* its brand name identification with the same prominence and position as displayed in its ordinary course of business.
- (5) The Court did not have sufficient evidence regarding the remaining PROaccess strategy brands to warrant granting summary judgment. Becks' is the only PROaccess partner for which there is any evidence of what its bags looked like before the PROaccess strategy, thus the scope of the Entry includes only the Beck's XL<sup>TM</sup> bags distributed by Beck's Superior Hybrids.
- (6) The following issues remain for trial: Mycogen's claim of breach of contract regarding the remaining PROaccess companies; Mycogen's claim that Pioneer has improperly provided a sublicense to its PROaccess companies; damages; and the applicable affirmative defenses that Pioneer has pled.

After proper reconsideration, the Court **AFFIRMS** the ultimate findings of the Order [Dkt. 173] granting Agrigenetics, Inc. d/b/a Mycogen Seeds Partial Summary Judgment as amended.

Date: 12/16/2010

  
Hon. Tanya Walton Pratt, Judge  
United States District Court  
Southern District of Indiana

Distribution attached.

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